IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 425 of 1989

to

CRIMINAL REVISION APPLICATIONNo 436 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KIRITKUMAR MAGANLAL SUREJA

Appearance:

MR KP RAVAL, APP for Petitioner in Cri.Rev.Apln.Nos.425 to 432/89

MR KG SHETH, APP for petitioner in Cri.Rev.Apln.Nos.433 to 436/89

MR PM THAKKAR FOR JP GADHAVI for Respondent No. 1 in Cri.Rev.Appln.Nos.425 to 432/89 and 434 to 436/89

MR MN POPAT for respondent No.1 in Cri.Rev.Appln.No.433 of 1989.

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/03/2000

COMMON ORAL JUDGEMENT

In the year 1989, it was brought to the notice of the High Court that learned Judicial Magistrate, First Class, Jam-Jodhpur while convicting the accused for the offence punishable under Sec.15 read with Sec.7 of Prevention of Food Adulteration Act, 1954, has awarded sentence of simple imprisonment till rising of the Court and a fine of Rs.500/-, in default, simple imprisonment for four days and had not imposed the minimum sentence and, therefore, said order was taken on administrative side and ultimately, it had been taken as suo motu and office was directed to place the same before the concerned Judge who was dealing with the Criminal Revision Application and same was placed before the Court (Coram: P.M.Chauhan,J. as he then was) wherein the court had passed the following order on 15-1-1990 which reads as under:

"It is brought to the notice of the High Court that learned Judicial Magistrate, First Class, Jam-Jodhpur while convicting the accused for the offence punishable under Sec.15 read with Sec.7 of Prevention of Food Adulteration Act, 1954, has awarded sentence of simple imprisonment till rising of the Court and a fine of Rs.500/-, in default, simple imprisonment for four days and had not imposed the minimum sentence. As such the order requires consideration in revision and, therefore, it should be taken in suo motu revision.

Rule."

2. On issuance of rule, respondents-accused appeared through their learned counsel, Mr.P.M.Thakkar and filed affidavit-in-reply in all the matters taking out the defence that it was a result of plea bargaining and as a result of which, above order of conviction and sentences were passed by the court below. Mr.Thakkar has also relied upon the cases reported in AIR 1983 Supreme Court 747 as well as 1993(2) G.L.R. page 1094 and argued that these cases are also of plea bargaining and in that event, respondents-accused were required to be given opportunity to defend themselves before the trial court and in the given circumstances, only alternative left

with this court is to order for de novo trial by remanding beck the matters.

3. I have heard learned APPs for the State. They have also agreed to the same after verifying the above cited judgments. It has been held by the Apex Court in para 1 of the case reported in AIR 1983 Supreme Court 747 as under:

> "Where by reason of plea bargaining the accused pleaded guilty and was convicted and sentenced by Magistrate acting upon his plea of guilty, the enhancement of sentence by the appellate or revisional Court in appeal or revision by acting on plea of guilty would not be reasonable fair and just. It would be clearly violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be led off lightly and then in appeal or revision, to enhance the sentence. The Court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial Court so that the accused can, if he so wishes, defend himself against the charges and if he is found guilty, proper sentence can be passed against him. Criminal Appeal No.15 of 1981, D/-2/4/82 (Kant.) Reversed."

4. I have gone through the above referred judgment and detailed affidavit filed by the respondents-accused as well as the order passed by the High Court. It is an admitted position that the sentence awarded by the Court below is not legal and, therefore, it is required to be quashed and set aside. As the accused have pleaded guilty as a result of plea bargaining, sentence awarded by the court below cannot be enhanced and opportunity must be given to them to defend themselves in the trial to be conducted as a de-novo trial keeping in mind Article 21 of the Constitution of India. In view of the above referred judgments, all these matters are required to be remanded back to the trial Court for de-novo trial.

5. Having regard to the facts and circumstances of the case, all these Criminal Revision Applications for enhancement of sentence are dismissed. The impugned judgment and order of conviction and sentence passed by the learned Judicial Magistrate, First Class, Jam-Jodhpur against each respondent-accused is hereby ordered to be

quashed and set aside. Fine, if paid, by the respondents-accused is ordered to be refunded back to each of them on proper identification. All these matters are remanded to the trial Court for de-novo trial to be disposed of on merits, according to law and as expeditiously as possible. Rule granted in each of these matters is discharged.

(R.P.DHOLAKIA,J.)
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